

SPECIAL CIVIL APPLICATION No 234 of 1987

Hon'ble MR.JUSTICE KUNDAN SINGH

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- JJJ

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Versus

STATE OF GUJ

MR SUPHEIA, for Petitioners  
MR BY MANKAD, A.G.P. for Respondents no.1 to 5.  
RULE SERVED for Respondent No. 6,12  
RULE UNSERVED for Respondent No. 8  
NOTICE UNSERVED for Respondent No. 10  
SERVED BY AFFIX.-(R) for Respondent No. 11

Date of decision: 21/01/99

By means of this petition, the petitioners sought for quashing the order of appointment of direct recruits

on the post of Jailor Group-II and for a direction to the respondents to appoint the petitioners on the post of Jailor Group-II.

2. The petitioners initially were recruited as Jail Sipay in the Jail Department under the control and supervision of the respondent no. 2. The petitioner no. 1 joined in service on 24-3-81, the petitioner no. 2 joined in the year 1979 the petitioners no. 3 and 4 joined in the year 1977 January in the year 1981 respectively. For the post of Jailor Group-II, the Rules dated 13-5-69 provide for appointment by direct selection and by departmental selection shall as far as practicable be made in the ratio of 1:1. The petitioners worked on the post of Jailor Group-II in the respondents on stop gap arrangement on leave vacancy of the persons concerned and after resuming the persons who had proceeded on leave, the petitioners were reverted to their original post. The petitioners being eligible and entitled for promotion to the higher post of Jailor Group-II on the basis of the Jail Department (Recruitment) Rules, 1969. Later on the vacancies were filled up by the direct recruits. Hence, the petitioners' claim was frustrated and the action of the department was arbitrary and against the statutory provisions of the law. Subsequently, it is also further asserted in the affidavit-in-reply that the ratio of appointment by direction selection and by departmental selection has been increased to 1:2. As such, they were also entitled for their promotion, in view of the quota provided by the Recruitments Rules, 1989.

3. In the affidavit filed by Mr. G.M. Thakor, Administrative Officer in the office of the Inspector General of Prisons - respondent no. 2, it is asserted that the petitioners were the employees of the office and they were eligible for promotion to the post of Jailor Group-II and the petitioners were selected for such promotion and were placed on the Select List and they were also occasionally promoted as Jailor Group-II for a short period on leave vacancy and such other contingency. It was also stated therein that due to certain administrative reasons, the suitable candidates for direct selection were not available and could not be appointed since 1972. Thus, as many as 13 posts of Jailor Group-II against the quota of direct recruits were lying vacant. In the year 1985 six candidates against the said quota were appointed in the month of March, 1986. In the year 1986 seven persons have also been selected against the said quota for direct recruits and those direct recruits were appointed by the impugned

order dated 21-1-1987 as the Recruitment Rules provides that the appointment by direct selection and by departmental selection was required to be made in the ratio of 1:1. Hence, the department was bound to maintain the said ratio while making appointment to the post of Jailor Group - II. The petitioners being departmental candidates had no opportunity for promotion on the post of Jailor Group-II against the quota for direct recruits and the petitioners' right to promotion is not affected in any manner. As such, they have no locus standi to file this petition.

4. Heard the learned counsel for the petitioners and learned State Counsel Mr. B.Y. Mankad, for the respondents no. 1 to 5 and perused the relevant papers.

5. Learned counsel for the petitioners made a statement that the prayer made in paragraph no. 11 (b) for quashing the impugned order of direct recruits on the post of Jailor Group-II has been refused by this Court. Now, the question remains for a decision is whether the petitioners were entitled for promotion at the relevant time on the basis of the quota system provided by the Rules, 1969 and 1989 as it is asserted in the affidavit-in-reply that the suitable candidates for direct selection could not be appointed till 1972. Hence, 13 posts of Jailor Group-II against the quota of direct recruits were lying vacant and those posts were filled up in the year 1986 and 1987. Jail Department (Recruitment) Rules, 1989 came into existence later on and they were not available at the relevant time. No doubt, it is asserted in para 4 of the affidavit-in-reply that the petitioners were eligible for promotion to the post of Jailor Group-II and they were selected for such promotion and they were placed on the select list and they actually worked for some time on leave vacancy and in other contingency. The department maintained the ratio of 1:1 as appeared from the assertion made in para 5 of the affidavit-in-reply. From the allegations and the assertions made in the petition as well as in the affidavit-in-reply, the petitioners do not appear to be entitled for promotion as the department has not placed the actual position before this Court regarding the appointments by direct recruitment or by selection. As such, the respondents are in better position to know about the appointments either by direct recruit or by promotion. The department is required to consider the exact position of the petitioners at the relevant time whether they were entitled for promotion or not.

6. Considering the facts and circumstances of this

case, this petition is disposed of with a direction to the respondents that they will consider the actual position of the petitioners as to whether they were entitled at the relevant time for promotion under the Jail Department (recruitment) Rules, 1969 and 1989 within three months. If they were entitled for promotion in accordance with the Rules provided thereof their entitlement should be considered and they should be given promotion in accordance with the aforesaid Rules.

7. Rule is made absolute to the aforesaid extent.  
Interim relief, if any, stands vacated.

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/JVSatwara/